

SENATE BILL 1459
By Davis L

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 13, relative to domestic violence.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-13-101, is amended by adding the following new subsection:

(c) If the assault was committed by a family or household member of the victim, then notwithstanding the provisions of subsection (b) to the contrary, the offense is a Class A misdemeanor, punishable by a fine of not less than three hundred fifty dollars (\$350) and imprisonment of not less than six (6) days, to be served consecutively. Any fine in excess of three hundred fifty dollars (\$350) shall be remitted to the county in which the offense occurred to be used for counseling family or household members who commit assault.

No family or household member of the victim shall be eligible for suspension of prosecution and dismissal of charges pursuant to the provisions of §§ 40-15-102 - 40-15-105 and 40-32-101(a)(3)-(c)(3) or for any other pretrial diversion program, nor shall any such family or household member be eligible for suspension of sentence or probation pursuant to any provision of law authorizing suspension of sentence or probation until such time as such family or household member has fully served day for day at least the minimum sentence provided by law.

29439813

29439813

002696

00269659

Unless the judge, using the applicable criteria set out in § 40-14-202(b), determines that family or household member is indigent, the minimum applicable fine shall be mandatory and shall not be subject to reduction or suspension. All fines are to be paid on the date sentence is imposed unless the court makes an affirmative finding that the defendant lacks a present ability to pay. The court shall then order a date certain before which payment shall be made. Should the defendant fail to comply with the order of the court, the clerk shall notify the court of such failure for further proceedings.

All persons sentenced under this subsection shall, in addition to service of at least the minimum sentence, be required to serve the difference between the time actually served and the maximum sentence on probation. The judge has the discretion to impose any conditions of probation which are reasonably related to the offense, but shall impose the following conditions:

(1) Participation in counseling programs for a period of two (2) years that address violence and control issues or substance abuse problems; and

(2) The payment of restitution to the victim suffering physical injury or personal losses as the result of such offense if such person is economically capable of making such restitution.

The defendant, if not indigent, shall be required to pay for the counseling required by the provisions of this subsection.

As used in this subsection, unless the context otherwise requires:

(1) "Family or household member" means:

(A) Adults or minors who are current or former spouses;

(B) Adults or minors who live together or who have lived together;

(C) Adults or minors who are dating or who have dated or who have or had a sexual relationship;

(D) Adults or minors related by blood, marriage or adoption;

(E) Adults or minors who are related or were formerly related by marriage;

(F) A respondent who is the parent of the petitioner's child;

(G) Persons whose sexual relationship has resulted in a current pregnancy; and

(H) Minor children of a person in a relationship that is described in paragraphs (A) through (G).

(2) "Victim" means a family or household member who is the subject of the assault.

SECTION 2. Tennessee Code Annotated, Section 39-13-102, is amended by adding the following new subsection:

(e) If the aggravated assault under subsection (a) was committed by a family or household member of the victim, then notwithstanding the provisions of subsection (d) to the contrary, the offense is a Class C felony, punishable by a fine of not less than five thousand dollars (\$5,000) and imprisonment of not less than three (3) years, to be served consecutively. Any fine in excess of five thousand dollars (\$5,000) shall be remitted to the county in which the offense occurred to be used for counseling family or household members who commit aggravated assault.

If the aggravated assault under subsection (c) was committed by a family or household member of the victim, then notwithstanding the provisions of subsection (d) to the contrary, the offense is a Class C felony, punishable by a fine of not less than seven thousand five hundred dollars (\$7,500) and imprisonment of not less than five (5) years, to be served consecutively. Any fine in excess of seven thousand five hundred dollars (\$7,500) shall be remitted to the county in which the offense occurred to be used for counseling family or household members who commit assault.

No family or household member of the victim shall be eligible for suspension of prosecution and dismissal of charges pursuant to the provisions of §§ 40-15-102 - 40-15-105 and 40-32-101(a)(3)-(c)(3) or for any other pretrial diversion program, nor shall any such family or household member be eligible for suspension of sentence or probation pursuant to any provision of law authorizing suspension of sentence or probation until such time as such family or household member has fully served day for day at least the minimum sentence provided by law.

Unless the judge, using the applicable criteria set out in § 40-14-202(b), determines that family or household member is indigent, the minimum applicable fine shall be mandatory and shall not be subject to reduction or suspension. All fines are to be paid on the date sentence is imposed unless the court makes an affirmative finding that the defendant lacks a present ability to pay. The court shall then order a date certain before which payment shall be made. Should the defendant fail to comply with the order of the court, the clerk shall notify the court of such failure for further proceedings.

All persons sentenced under this subsection shall, in addition to service of at least the minimum sentence, be required to serve the difference between the time actually served and the maximum sentence on probation. The judge has the discretion to impose any conditions of probation which are reasonably related to the offense, but shall impose the following conditions:

- (1) Participation in counseling programs for a period of two (2) years that address violence and control issues or substance abuse problems; and
- (2) The payment of restitution to the victim suffering physical injury or personal losses as the result of such offense if such person is economically capable of making such restitution.

The defendant, if not indigent, shall be required to pay for the counseling required by the provisions of this subsection.

As used in this subsection, unless the context otherwise requires:

(1) "Family or household member" means:

(A) Adults or minors who are current or former spouses;

(B) Adults or minors who live together or who have lived together;

(C) Adults or minors who are dating or who have dated or who have or had a sexual relationship;

(D) Adults or minors related by blood, marriage or adoption;

(E) Adults or minors who are related or were formerly related by marriage;

(F) A respondent who is the parent of the petitioner's child;

(G) Persons whose sexual relationship has resulted in a current pregnancy; and

(H) Minor children of a person in a relationship that is described in paragraphs (A) through (G).

(2) "Victim" means a family or household member who is the subject of the aggravated assault.

SECTION 3. Tennessee Code Annotated, Section 39-13-204(i), is amended by adding the following new subdivision:

(14) The murder was committed against a family or household member. For the purposes of this subdivision, the term "family or household member" means:

(A) Adults or minors who are current or former spouses;

(B) Adults or minors who live together or who have lived together;

(C) Adults or minors who are dating or who have dated or who have or had a sexual relationship;

(D) Adults or minors related by blood, marriage or adoption;

(E) Adults or minors who are related or were formerly related by marriage;

(F) A respondent who is the parent of the petitioner's child;

(G) Persons whose sexual relationship has resulted in a current pregnancy; and

(H) Minor children of a person in a relationship that is described in paragraphs (A) through (G).

SECTION 4. Tennessee Code Annotated, Section 36-3-612, is hereby amended by deleting subdivision (2) and by substituting instead the following:

Set a reasonable bond, within twenty-four (24) hours of the arrest, pending the hearing on the alleged violation of the order of protection; and

SECTION 5. This act shall take effect upon becoming a law, the public welfare requiring it.